



DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
BUREAU OF REVENUE SERVICES, INCOME/ESTATE TAX DIVISION

Rule No. 803 (18-125 CMR 803)

WITHHOLDING TAX REPORTS AND PAYMENTS

SUMMARY: This rule identifies income subject to Maine withholding and prescribes the methods of determining the amount of Maine Income Tax to be withheld from wages, non-wage payments, and pass-through entity income; and related reporting requirements.

.01 INCOME SUBJECT TO MAINE WITHHOLDING:

A. Any person who maintains an office or transacts business within the State and who is required to withhold federal income tax from a particular payment must also withhold Maine Income Tax if the payment constitutes income that is not excluded from taxation under Maine law. *See* 36 M.R.S.A. §§ 5250 and 5255B.

B. A pass-through entity doing business in Maine must withhold Maine Income Tax for nonresident members based on Maine-source member income. *See* 36 M.R.S.A. § 5250-B.

.02 COMPUTING THE AMOUNT OF MAINE TAXES TO WITHHOLD:

A. Wage methods of Withholding. Any of the following methods may be used by persons responsible for withholding to determine the amount of Maine Income Tax to be withheld from payments subject to the federal wage method of withholding.

(1) Percentage Method. The amount of tax to be deducted and withheld under the percentage method of withholding is computed using the applicable percentage method tax rate schedule contained in the current "Withholding Tables Maine Individual Income Tax" booklet published by Maine Revenue Services according to the instructions contained therein.

(2) Wage-Bracket Tables Method. The amount of tax to be deducted and withheld under the wage-bracket tables method is determined using the applicable wage bracket withholding table contained in the current "Withholding Tables Maine Individual Income Tax" booklet with respect to the period in which such wages are paid. Each table consists of wage brackets that establish the tax to be withheld by number of withholding allowances.

(3) Increases in Withholding. A payee may request that the payor deduct and withhold an additional amount from the payee's wages or other periodic payments. The payor must comply with the payee's request, except that the amount that the payee requests to be deducted and withheld cannot exceed the amount that remains after the payor has deducted and withheld all amounts otherwise required to be deducted and withheld by federal and state law. The payee must make the request for the additional withholding amount on a Maine Withholding Allowance Certificate, Form W-4ME. The additional amount that is deducted and withheld pursuant to the payee's

request shall be considered to be tax required to be deducted and withheld under 36 M.R.S.A., Chapter 827 and all applicable provisions of law and rules with respect to such tax shall apply.

(4) Flat Dollar Amount Federal Withholding. If, for federal withholding purposes, a payee has claimed such marital status and number of withholding allowances that withholding results in zero and the payee has requested an additional dollar amount of withholding, the person responsible for withholding shall withhold an amount of Maine Income Tax equal to that of an individual recognizing marital status and minimum withholding allowances (one withholding allowance if single and two withholding allowances if married); or the payee may be allowed the option of withholding at 5 percent of the payment subject to withholding.

(5) Other Methods. In the event that any one of the aforementioned methods does not properly reflect actual withholding liability, either the person responsible for withholding or the payee may request permission from the State Tax Assessor (hereafter “assessor”) for an alternate method acceptable to both payee and payor. Claiming a larger number of withholding allowances for Maine purposes than for federal purposes is not allowed unless expressly authorized in writing by the assessor (see paragraph (8) below).

(6) Maine Withholding Allowance certificate, Form W-4ME. A payee must furnish the payor with a signed Maine Withholding Allowance Certificate (Form W-4ME) on the same date as the required federal Withholding Allowance Certificate (Form W-4 or W-4P). The Maine certificate must list the number of withholding allowances the payee claims for Maine withholding, which may not exceed the number to which the payee is entitled. The number of withholding allowances claimed on the federal Form W-4 or W-4P is the base for the number claimed on the Form W-4ME. However, the number of allowances claimed for federal withholding must be adjusted for Maine withholding in accordance with the instructions on the Maine Withholding Allowance Certificate to reflect differences between federal and Maine laws. Also, a married payee may use Form W-4ME to choose withholding from the optional withholding tables for married individuals with two incomes.

If the payee is required to provide the payor with a revised Form W-4 or W-4P because of a change in status or decrease in the number of withholding allowances, the payee must also complete a new Maine Withholding Allowance Certificate, Form W-4ME, on the same date to reflect the same change. The revised Form W-4ME will take effect on the same date as the revised federal Form W-4 or W-4P.

(7) Electronic Form W-4ME. An employer may establish a system for its employees to file withholding exemption certificates electronically.

(a) The electronic system must ensure that the information received is the information sent, and must document all occasions

of employee access that result in the filing of a Form W-4ME. In addition, the design and operation of the electronic system, including access procedures, must make it reasonably certain that the person accessing the system and filing the Form W-4ME is the employee identified in the form.

(b) The electronic system must provide the employer with exactly the same information as the paper Form W-4ME.

(c) The electronic filing must be signed by the employee under penalties of perjury. (See 36 M.R.S.A. § 193.)

(i) Jurat. The jurat (perjury statement) must contain the language that appears on the paper Form W-4ME. The electronic program must inform the employee that he or she must make the declaration contained in the jurat and that the declaration is made by signing the Form W-4ME. The instructions and the language of the jurat must immediately follow the employee's income tax withholding selections and immediately precede the employee's electronic signature.

(ii) Electronic signature. The electronic signature must identify the employee filing the electronic Form W-4ME and authenticate and verify the filing. For this purpose, the terms "authenticate" and "verify" have the same meanings as they do when applied to a written signature on a paper Form W-4ME. An electronic signature can be in any form that satisfies the foregoing requirements. The electronic signature must be the final entry in the employee's Form W-4ME submission.

(iii) Copies of electronic Forms W-4ME. Upon request by the assessor, the employer must supply a hard copy of the electronic Form W-4ME and a statement that, to the best of the employer's knowledge, the named employee filed the electronic Form W-4ME. The hard copy of the electronic Form W-4ME must provide exactly the same information as, but need not be a facsimile of, the paper Form W-4ME.

(8) Personal Withholding Exemption Variance Certificate. A payee who claims a number of Maine withholding allowances that exceeds the number of allowances claimed for federal income tax withholding purposes must furnish to the payor an approved withholding exemption variance certificate. The payee can obtain the form from Maine Revenue Services, complete it according to the instructions thereon, and return it to the assessor for approval. If approved, the payee must submit the approved variance certificate to the employer along with a properly completed form W-4ME to support the number of allowances claimed.

The approved withholding variance certificate is valid until December 31st of the year issued or until the circumstances leading to its issuance change so that the payee would no longer qualify for the variance certificate, whichever occurs first. It is the payee's responsibility to promptly report to the assessor any material change in circumstances relevant to the information provided in obtaining the certificate.

If the payee fails to provide the approved variance certificate, the payor must withhold an amount of Maine Income Tax equal to that of an individual recognizing marital status and minimum withholding allowances (one withholding allowance if single and two withholding allowances if married).

(9) Invalid Forms W-4 or W-4P. A Form W-4 or W-4P that is determined to be invalid for the purpose of federal withholding is not to be used as the base for a form W-4ME to compute Maine withholding. If, upon request, the payee does not provide a valid Form W-4ME, the payor must withhold as if the payee were single and claiming no allowances. Also, if the assessor notifies a payor that a Form W-4ME is invalid, or that the amount being withheld appears to be inadequate, the payor must withhold as if the payee were single and claiming no allowances until a valid Form W-4ME is furnished.

B. Withholding from Non-wage Payments. For non-wage payments that are subject to flat-rate federal withholding, withholding at 5 percent of the total payment is required for Maine income tax purposes.

C. Withholding from Pass-Through Entity Income Sourced to Maine.

(1) Maine-source Member Income. Maine-source member income is the owner's or beneficiary's (hereafter the "member's") share of the net income of the entity either apportioned to Maine in accordance with 36 M.R.S.A., Chapter 821 in the case of business entities, or derived from or connected with sources in Maine as determined under 36 M.R.S.A. § 5142 in the case of estates, trusts, and other entities that conduct no trade or business in Maine. For purposes of this paragraph, "net income of the entity" means:

(a) for a partnership, the items of income, loss, and deduction used for reporting on 2002 federal Form 1065, page 4, Analysis of Net Income (Loss), line 1, or the comparable line number in subsequent years that incorporates all income, loss and deduction items;

(b) for an S corporation, the items of income, loss, and deduction used for reporting on 2002 federal Form 1120S, Schedule K, line 23, or the comparable line number in subsequent years that incorporates all income, loss and deduction items;

(c) for an estate or trust, the items of income, loss, and deduction used for reporting on 2002 federal Form 1041, line 18, or the comparable line number in subsequent years that incorporates all income, loss and deduction items; and

(d) for other pass-through entities, similar items of income, loss, and deduction used for reporting to the Internal Revenue Service on returns similar to those described in sub-paragraphs (a), (b), (c).

(2) Withholding Amount.

(a) Rate. Unless otherwise exempted herein or otherwise exempted by the State Tax Assessor either by ruling or in published instructions, the pass-through entity must withhold 8.5% of Maine-source member income for each nonresident member, except that for nonresident members that are C corporations, the withholding rate is 8.93%.

(b) Quarterly Amounts. Except as provided in Section .09, withholding is calculated on a quarterly basis. The quarterly amounts are to be based upon the Maine-source member income of the entity year to which they relate. The quarterly amount that must be paid by the entity is equal to the sum of the quarterly amounts for each of its nonresident members. Compute the quarterly amount of a nonresident member by multiplying the member's Maine-source entity income for the current quarter by the appropriate rate (*see* (a) above).

(c) Safe harbor. No late payment penalty will be imposed if the withholding amount is equal to an amount based on either of the following:

(i) 90% of the current year's Maine-source member income; or

(ii) if the prior taxable year of the entity consisted of 12 months, the prior year's Maine-source member income.

(d) Meaning of Income. For purposes of this paragraph, income for a particular quarter means either actual income for the particular quarter or 25% of annual income.

(3) Definition of Nonresident. For purposes of this section, "nonresident" means:

(a) For individuals, a person who is not a Maine resident as defined by 36 M.R.S.A. § 5102(5);

(b) For business entities, including C corporations and pass-through entities, an entity whose commercial domicile is not in Maine. Commercial domicile means the principal place from which the business activities of a taxpayer are directed or managed. If it is not possible to determine the principal place from which the business activities of a taxpayer are directed or managed, the state of the taxpayer's incorporation (or similar registration if not a corporation) is considered its state of domicile; and

(c) For trusts and estates, a trust or estate that is not a Maine resident trust or estate as defined by 36 M.R.S.A. § 5102(4).

(4) Tiered Pass-through Entities.

(a) A tiered pass-through entity arrangement is one in which some or all of the interests in one pass-through entity (lower-tier entity) are held by a second pass-through entity (upper-tier entity). A tiered pass-through entity arrangement may have two or more tiers; in such cases, a single entity can be both a lower-tier and an upper-tier entity.

(b) Unless exempted, each pass-through entity must withhold for its nonresident members, including members who are pass-through entities. To prevent multiple withholding on the same income, a pass-through entity that recognizes distributive income (i.e., an upper-tier entity) is not required to withhold from nonresident member income generated by a lower-tier entity if the lower-tier entity has already withheld from that income. The upper-tier entity, however, must separately report to its members (on Form 1099ME) their proportionate distributive share of amounts withheld by the lower-tier entity.

(c) Exception. Upon written application and with the approval of the assessor, a lower-tier entity may meet its withholding obligation for an upper-tier entity by directly withholding from the distributive income of the nonresident members of the upper-tier entity. If approval is granted, the lower-tier entity is required to report (on Form 1099ME) directly to the nonresident members the amounts withheld.

(5) Exemptions. A pass-through entity is not required to withhold tax for a nonresident member if one of the following applies:

(a) The nonresident member's Maine-source member income from the entity for the previous year was less than \$1,000, or will be less than \$1,000 for the current year;

(b) The nonresident member is a tax-exempt entity under either Maine law or federal law (including IRAs, Keoghs, pension and profit-sharing plans and other such

organizations), unless the Maine-source member income of the tax-exempt entity is unrelated business income;

(c) The assessor has determined, upon written approval and subject to any conditions that may be imposed, that the nonresident member's Maine-source member income is exempt from withholding; or

(d) The nonresident member clearly falls within a category of entities or individuals whose Maine-source member income is exempt from withholding pursuant to advice published by the assessor either in form instruction booklets or otherwise.

.03 REPORTING:

A. Introduction. Maine Revenue Services maintains separate withholding accounts for pass-through entity withholding and for pass-through entity employee wage withholding. Separate reporting forms are provided for each withholding type.

B. Reporting.

(1) Quarterly Return. In general, and except as provided in section .09, every person required to make a return of income tax withheld pursuant to 36 M.R.S.A. §5253 must make a return for the first calendar quarter in which the person is required to deduct and withhold such tax and for each subsequent calendar quarter, whether or not income subject to withholding is earned or payments subject to withholding are made therein, until the person is no longer required to make such returns and has so notified the assessor (see .08 Cancellation of Withholding Registration).

(2) Annual Reconciliation. An annual reconciliation (Form W-3ME) must be filed on or before February 28 for the prior calendar year. The annual reconciliation form will list the total withheld as shown on the payee statements and the total amount of withholding reported on the quarterly returns filed for the year. In addition to following all federal legal requirements for filing all Wage and Income Information Statements (W-2s, 1099s, etc.), the information filed with federal government entities must include state income and withholding information. Withholders who report to the federal government on magnetic media must forward to Maine Revenue Services a duplicate of the disk or tape filed with the federal government that includes state income and withholding information.

(3) Payee or Member Information Statement. The information statement that the withholder is required to furnish to the payee pursuant to 36 M.R.S.A. §5251 is a copy of the federal Wage and Tax Statement (Form W-2) in the case of an employee, or the appropriate federal information statement (Form 1099 series, etc.) for payments other than wages. In the case of a member of a pass-through entity, the information statement is Maine Form 1099ME.

(4) More Frequent Reporting. Quarterly filing of withholding tax returns is the minimum required reporting frequency. The assessor may require more frequent reporting if the assessor believes that the collection of withheld taxes is in jeopardy, or if the assessor determines that any person required to deduct and withhold Maine income tax has failed to collect, truthfully account for, or pay over such tax, or to file returns in a timely manner.

(5) Submission by Employer of Certain State W-4ME Forms. If an employee furnishes a Form W-4ME to the employer in accordance with section .02(A)(6) or (7) above claiming more than 10 withholding allowances or claiming exempt status, the employer is required to submit a copy of the Form W-4ME, along with a copy of any supporting information provided by the employee, to the assessor. This submission is not required if the employee claiming exempt status is expected to earn an annual income of less than \$2,000. Generally, the copies of Form W-4ME required by this subsection must be submitted with Form 941ME for the quarter in which the employee furnished the Form W-4ME.

(6) Adjustment of Overpayments.

(a) Within a Reporting Period: If a payor deducts and withholds more than the correct amount of tax required by Chapter 827 from a payee and repays the amount of the overcollection to the payee before the return for the period is filed with the assessor and obtains a written receipt from the payee, the payor need not report on the return, or pay to the assessor, the amount of the overcollection. Any overcollection not repaid to and receipted by the payee shall be reported and paid to the assessor with the return for the return period in which the overcollection was made.

(b) Within a Calendar Year: If, in any return period in a calendar year, a payor deducts and withholds more than the correct amount of tax required by Chapter 827 from a payee and the payor pays the amount of such overcollection to the assessor, the payor may reimburse the payee in any subsequent return period within the calendar year. If the amount of the overcollection is repaid to the payee, the payor shall retain the written receipt of the payee showing the date and amount of the repayment. The payor will then file an amended return with the assessor for the period in which the overcollection was made reporting the correct amount of withholding for the period. The amended return must contain such information as is required by the instructions relating to the form. If the payor does not repay the amount of the overcollection, the payor may reimburse the payee by applying the amount of the overcollection against the tax under Chapter 827 that would otherwise be required to be withheld from a subsequent payment by the payor to the payee within the calendar year in which the overcollection is made. In this case, no amended return is required.

.04 PAYMENT:

A. Payment Schedule. A person required to deduct and withhold tax for employees or for non-wage payments must remit the withheld tax in accordance with one of two possible schedules based on an annual determination pursuant to subsection C below. The two remittance schedules are semi-weekly and quarterly. Except as provided in section .09, pass-through entities are subject to quarterly payments only for withholding for nonresident members.

B. Lookback Period Defined. The lookback period for each calendar year is the 12-month period ending on the preceding June 30. For example, the lookback period for calendar year 2004 is the period July 1, 2002 through June 30, 2003.

C. Determination of Status. Except in the case of pass-through entity withholding for nonresident members, the determination of a withholder's remittance schedule for a calendar year is based on the aggregate amount of withheld taxes reported by the withholder for the lookback period defined in subsection B above. New withholders are treated as having withholding tax liability of zero for any calendar quarter within the lookback period during which the withholder did not exist.

(1) Semi-weekly Remitters. A withholder must remit on a semi-weekly basis for the entire calendar year if the aggregate amount of withholding reported for the lookback period was \$18,000 or more. A semi-weekly remitter must remit according to the following schedule:

<u>Day Wages Paid:</u>	<u>Remittance Due:</u>
Wednesday, Thursday, Friday	On or before the following Wednesday
Saturday, Sunday, Monday, Tuesday	On or before the following Friday

If payment is made by check, the check must be accompanied by the payment voucher, Form 900ME. If a quarterly reporting period ends within a semi-weekly period, and if wages are paid on payment dates that fall in each of the two quarters, separate remittances must be made for each quarter. For example, if one quarterly return period ends on Thursday and a new quarterly return period begins on Friday, tax withheld from payments made on Wednesday and Thursday are subject to one remittance requirement and tax withheld from payments made on Friday are subject to a separate remittance requirement. If paying by check, use separate payment vouchers (Form 900ME) that refer to the correct quarterly reporting period for each of the remittances. If remitting by EFT, make separate remittances identified for the correct quarterly reporting period.

(2) Quarterly Remitters. A withholder is a quarterly remitter for the entire calendar year if the aggregate amount of withholding reported for the lookback period was less than \$18,000. The quarterly remitter must remit the amount withheld from payments made during a calendar quarter on or before the last day of the month following the close of the calendar quarter. If paying by check, the payment must accompany the quarterly return.

D. Interest and Penalty. Withheld taxes will be considered delinquent and applicable interest and penalties as provided for in 36 M.R.S.A. §§186 and 187-B will be charged if the return is not filed, and/or the payment is not received, by the due date.

E. Electronic Funds Transfer. Maine Revenue Services accepts payments by electronic funds transfer. EFT accounts must be set up with Maine Revenue Services prior to making the first EFT payment. Generally, withholders who had a withholding liability of \$200,000 or more during the lookback period are required to remit payments by electronic funds transfer. Others may participate in EFT voluntarily. An EFT application form may be obtained by calling (207) 287-8276. Withholders who remit by EFT should not use the payment voucher, Form 900ME. No voucher is necessary. Withholders who remit by EFT must still file the quarterly return to report withholding information. For information, contact Maine Revenue Services EFT Unit at (207) 287-8276. See Rule 102 regarding EFT requirements and procedures.

F. Refund of Income Tax Withheld. Any withholder who pays to the assessor more than the correct amount of income tax withheld may file a claim for refund of the overpayment by filing an amended return for the period for which the overpayment is made. The amended return must contain the information required by the instructions relating to the form. The amended return must be filed within the open period for refund (*see* 36 M.R.S.A. §5278).

G. Payment Application--Combined Quarterly Return. A payment received with a combined quarterly return on which the employer is reporting both income tax withheld for employees and unemployment contributions will be allocated between these two taxes in the following manner:

(1) If the remittance equals the entire amount due, both taxes will be paid in full.

(2) If the remittance is less than the total amount due on this quarterly return, it will be prorated between the two taxes using the correct amounts due for each tax. However, if the underpayment was caused by an incorrect calculation of one of the taxes and the employer paid the amount calculated as due for both taxes, the remittance will be used first to pay the correctly computed tax and the balance will be applied to the tax that was incorrectly calculated.

(3) If the amount remitted is more than the total amount due on the quarterly return, the payment will be allocated in the following manner:

(a) Both taxes due for that quarter will be paid in full.

(b) The remainder of the payment will be prorated using all amounts outstanding for the two taxes and applied to those arrears.

(c) Any balance remaining after all arrears for the two taxes are satisfied will be applied to any other tax debt owed to Maine Revenue Services.

(d) Any balance remaining thereafter will be refunded to the employer.

H. Payment Application--Combined Bill. A payment received as the result of a billing notice on which the employer is billed for both income tax withheld for employees and unemployment contributions will be prorated between these two taxes using the tax amounts due as recorded on the bill.

.05 RETURNS:

Forms as prescribed by the assessor must be used. These forms are available from Maine Revenue Services. Once a person who is required to withhold is registered with the Central Registration Unit, Department of Labor, the forms are mailed directly to the withholder prior to the filing date. However, failure to receive the forms does not excuse the requirement for timely filing.

.06 AGENTS:

A withholding agent for a person required to remit withholding may remit and report withholding on behalf of the person if authorized to do so by the person.

.07 REGISTRATION BY PERSONS REQUIRED TO WITHHOLD INCOME TAX:

Persons required by Maine law to withhold income tax must register with the Central Registration Unit, Department of Labor as a withholder. Registration is accomplished by completing the application form provided by Maine Revenue Services and submitting it according to the instructions on the form. Upon receipt of the completed application, the Central Registration Unit will set up the necessary withholder account and forward the appropriate forms to the withholder.

.08 CANCELLATION OF WITHHOLDING REGISTRATION:

A person who is registered to withhold Maine income tax, and who no longer has a withholding obligation must notify the assessor that withholding is no longer required and that the withholder account is to be canceled. The notification must be on the cancellation form provided by the assessor and must include the reason that Maine income tax withholding is no longer required and the date the withholding obligation ceased. The notification must include the address at which the required records will be kept and the name of the person keeping such records. If the business has been sold or otherwise transferred to another person, include the name and address of that person and the date of the sale or transfer. If no such sale or transfer occurred, or the payor does not know the name of the person to whom the business was sold or transferred, that fact should be included in the notification.

.09 APPLICATION DATE:

The subsections of this Rule as amended in 2003 relating to pass-through entity withholding apply to Maine-source member income earned on or after January 1, 2003. *See* PL 2003, Chapter 20, § AA-6. Since calendar year 2003 is the transitional year, only one return and remittance for that year is required. That return and payment will be due on or before January 31, 2004 for the entire amount of the 2003 withholding. Quarterly reporting and payment of pass-through entity withholding will begin in calendar year 2004.

STATUTORY AUTHORITY: 36 M.R.S.A. Section 112.

EFFECTIVE DATE: January 1, 1982

AMENDED: February 3, 1987

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